AO 243 (Rev. 2/95)

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

3:07CV46-WHA

UNITED STATES DISTRICT COURT	District MIDDLE DISTRICT OF ALABAMA	
Name of Movant DAVID FRANKLIN COTNEY, JR.	Prisoner No. 11196-002	Case No. 3:03-CR-0078-A
Place of Confinement U. S. Penitentiary-Big Sandy, P. O. Box 2068, Inez, Kentucky 41224		

RECEIVED 2007 JAN 16 A 11:3 DEBRA P. HACKETT, CLK U.S. DISTRICT COURT MIDDLE DISTRICT ALA

UNITED STATES OF AMERICA V. DAVID FRANKLIN COTNEY, JR.
(name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack U. S. District Court, Middle District of Alabama, Eastern Division

2. Date of judgment of conviction October 22, 2003

3. Length of sentence 342 months

4. Nature of offense involved (all counts) Conspiracy to manufacture methamphetamine in violation of 21 U.S.C. §846; use and possession of a firearm in relation to the commission of conspiracy to manufacture methamphetamine in violation of 18 U.S.C. §924(c)(1)

5. What was your plea? (Check one)
   (a) Not guilty ☐
   (b) Guilty ☒XX
   (c) Nolo contendere ☐
   If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:
   N/A

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
   (a) Jury ☐
   (b) Judge only ☒XX

7. Did you testify at the trial?
   Yes ☐ No ☒XX

8. Did you appeal from the judgment of conviction?
   Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court U. S. Court of Appeals for the Eleventh Circuit

(b) Result Judgment affirmed

(c) Date of result October 11, 2005

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information: N/A

(a) (1) Name of court ______

(2) Nature of proceeding ______

(3) Grounds raised ______

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result ______

(6) Date of result ______

(b) As to any second petition, application or motion give the same information:

(1) Name of court ______

(2) Nature of proceeding ______

(3) Grounds raised ______

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result ______

(6) Date of result ______

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?
(1) First petition, etc. Yes ☐ No ☐
(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

______

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(h) Denial of right of appeal.

A. Ground one: COTNEY WAS DEPRIVED OF HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT WHEN HIS COUNSEL ALLOWED THE AUSA AND THE COURT TO DEPART DOWNWARDLY UNDER U.S.S.G. 5K1.1 ONLY THREE LEVE[LS] WHEN THE CUSTOM THROUGHOUT THE BOP IS A DOWNWARD DEPARTURE OF 25 PERCENT OF THE ENTIRE SENTENCE, IF NOT 50 PERCENT

Supporting FACTS (state *briefly* without citing cases or law)

The AUSA and the sentencing court agreed that Cotney had provided substantial assistance to the Government in the form of cooperation and potential testimony proferred in debriefing. The AUSA, in collusion with the court, awarded a minimal three-point downward departure. The custom followed throughout the BOP is a reduction of 25 percent of the sentence.

B. Ground two: PLEASE REFER TO SUPPLEMENT ATTACHED HERETO AND FILED HEREWITH

PLEASE REFER TO SUPPLEMENT, PAGE 5b, for Ground Two, which is too lengthy to be presented in the space provided

Supporting FACTS (state *briefly* without citing cases or law)

PLEASE REFER TO SUPPLEMENT, PAGE 5b, for the supporting facts with respect to Ground Two

C. Ground three:

PLEASE REFER TO SUPPLEMENT, PAGE 5e, for Ground Two, which is too lengthy to be presented in the space provided

Supporting FACTS (state *briefly* without citing cases or law)

PLEASE REFER TO SUPPLEMENT, PAGE 5e, for the supporting facts with respect to Ground Three

SUPPLEMENT TO PAGE 5
COTNEY, David F., Jr.
Ground 1 et. seq.

ISSUE ONE: COTNEY WAS DEPRIVED OF HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT WHEN HIS COUNSEL ALLOWED THE AUSA AND THE COURT TO DEPART DOWNWARDLY UNDER U.S.S.G. 5K1.1 ONLY THREE LEVELS WHEN THE CUSTOM THROUGHOUT THE BOP IS A DOWNWARD DEPARTURE OF 25 PERCENT OF THE ENTIRE SENTENCE, IF NOT 50 PERCENT

Supporting FACTS (continued):

Counsel for the defendant was deficient in failing to argue with the AUSA and present evidence to the court as to the customary award for substantial assistance. The court awarded Cotney's co-defendants a very substantial reduction in sentence for the same cooperation and participation. The court was not made aware of the full extent of Cotney's assistance, and it was counsel's job to present evidence of the actual assistance and keep it from being blurred by the fact that a police dog was killed. Cotney was prejudiced by the difference between the sentence he should have received and the sentence which he did, in fact, receive.

SUPPLEMENT TO PAGE 5
COTNEY, David F., Jr.
Ground 2 et. seq.

ISSUE TWO: COTNEY WAS DEPRIVED OF HIS RIGHTS TO DUE PROCESS AND THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FIFTH AND SIXTH AMENDMENTS WHEN HE WAS CONVICTED AND SENTENCED FOR CONSPIRACY "TO MANUFACTURE 50 GRAMS OR MORE OF METHAMPHETAMINE," WHEN HE WAS, IN FACT, GUILTY ONLY OF A LESSER INCLUDED OFFENSE UNDER 21 U.S.C. §841(B)(1)(B)

Two of Cotney's co-defendants objected on the basis that the sentences did not comport with the proof. Based on applicable law, the indictment, Count One, must be construed to charge that the defendants conspired to manufacture 50 grams of pure methamphetamine. Actually, the defendants conspired to manufacture, and did in fact attempt to manufacture, a mixed amount of 155.61 grams of methamphetamine (see laboratory reports and testimony of Melissa Marie Kelly during sentencing, Tr. pp. 38 et. seq.).

The court committed gross error with respect to this question. The two co-defendants argued that there is a distinction "between methamphetamine and methamphetamine actual." The court ruled that although "that distinction is made in the guidelines at certain places... [t]his is not a case of methamphetamine mixture." (Tr., p. 172). The Court has never been more wrong.

The sentencing guidelines which should have been applied herein, U.S.S.G. §2D1.1(7), and all other portions of §2D1.1, indicate that an analysis must first state a mixture amount of methamphetamine, such as, in this case, at least "50 G but less than 200G of methamphetamine [a mixture]" or a pure amount of "at least 5 G but less than 20 G of 'methamphetamine (actual)'"[Emphasis added]. It was incumbent upon the laboratory analysis to come to grips with this problem, along with the forensics expert, Ms. Kelly.

SUPPLEMENT TO PAGE 5
COTNEY, David F., Jr.
Ground 2 et set.

Officer Kelly's testimony repeatedly refers to the evidence as constituting a mixture, i.e. "So there was 115.07 grams of pseudoephredrine in the mixture." (Tr., p. 45). She admitted that 75 percent would be in the middle range for purity, and that "no one person can convert everything 100 percent."

The sentencing judge made the following erroneous assertion:

> Methamphetamine mixture is when manufactured methamphetamine is taken and mixed with something else. The indictment charged the defendants with an offense of methamphetamine, which, in effect, would be the same thing under the statute as actual methamphetamine... They pleaded guilty to 50 grams of methamphetamine, and under the statute, that's actual methamphetamine."

Note (B) to the Drug Quantity Table in U.S.S.G. §2D1.1 thoroughly contradicts and refutes the sentencing judge's conclusions:

> (B) The term...'methamphetamine (actual); refer[s] to the weight of the controlled substance, itself,' contained in the mixture or substance...[U]se the offense level determined by the entire weight of the mixture or substance, or the offense level of the... methamphetamine (actual), whichever is greater.

Mr. Lewis, counsel for co-defendant Nelson, proved the essence of this issue during his cross-examination of Ms. Kelly. He asked, "You did not use the phrase 'actual methamphetamine.'" She replied, "No... Actual methamphetamine would be if we had a sample of methamphetamine that we had to quantify. Theoretically, we had no methamphetamine, so we're working with the starting material." (Tr., pp. 51-52).

This defect in the judge's reasoning makes all of the difference in the world under 21 U.S.C. 841(b)(1). The mixed amount of 155.61 grams brings the penalty within the provisions of 21 U.S.C. §841(b)(1)(B), and U.S.S.G. 2D1.1(7), which imposes an offense level of 26. This base offense level is significantly lower than the base level of 32 actually imposed.

SUPPLEMENT TO PAGE 5
COTNEY, David F., Jr.
Ground 2 et seq.

Cotney's counsel was deficient, and therefore, ineffective throughout the course of the proceeding with respect to this issue. There is nothing in the record to evince that counsel was the least bit aware of the requirements for delineating between a mixture of methamphetamine and methamphetamine (actual). In the absence of counsel's failure to object and communicate with Cotney with respect to this question, Cotney would not have pleaded guilty and would have insisted upon a jury trial of the issues.

SUPPLEMENT TO PAGE 5
COTNEY, DAVID F., JR.
Ground 3 et seq.

ISSUE THREE: COTNEY'S RIGHTS TO DUE PROCESS AND PROOF BEYOND A REASONABLE DOUBT WITH RESPECT TO THE QUANTITY OF METHAMPHETAMINE FOR WHICH HE WAS SENTENCED WERE VIOLATED WHEN THE SENTENCING JUDGE, UTILIZING THE GUIDELINES WHICH WERE MANDATORY AT THE TIME, BASED THE SENTENCE UPON U.S.S.G. §2D1.11 RATHER THAN U.S.S.G. §2D1.1 IN A PROSECUTION UNDER 21 U.S.C. §841(b)(1)(A) AND 846

Cotney was charged with conspiracy to manufacture methamphetamine in violation of 21 U.S.C. §§841(a)(1), (b)(1)(A), and 846. Yet, the sentencing judge resorted to U.S.S.G. 2D1.11 and instead of punishing Cotney for conspiracy to manufacture the drug, punished him for being in possession of or using listed chemicals in violation of 21 U.S.C. §841(c)(1). The sentencing judge did this on the basis that the evidence of the amounts of mixed methamphetamine and methamphetamine (actual) was sketchy and the judge was not comfortable with it.

The judge resorted to U.S.S.G. 2D1.11 to avoid the necessity of punishing Cotney for conspiring to manufacture mixed amounts of methamphetamine. He did this even though U.S.S.G. 2D1.11 specifically reveals that 2D1.11 can be used in prosecutions under 21 U.S.C. §841(c)(1), but not in prosecutions under 21 U.S.C. §841(b)(1).

Counsel made no objections to the judge surprise announcement that he was going to punish Cotney for the amount of pseudoephedrine in the mixture rather than the amount of methamphetamine that he conspired to possess. He had no knowledge in the area of methamphetamine prosecutions, and he failed to communicate with Cotney and attempt to do anything about the use of U.S.S.G. 2D1.11. This representation was extremely deficient under Strickland. In the absence of this deficiency, Cotney would have pleaded not guilty and insisted upon a jury trial in this matter (please see infra., argument concerning breach of plea agreement).

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D. Ground four: PLEASE REFER TO SUPPLEMENT, PAGE 6a, for Ground Four, which is too lengthy to be presented in the space provided

Supporting FACTS (state *briefly* without citing cases or law)

PLEASE REFER TO SUPPLEMENT, PAGE 5B, FOR THE SUPPORTING FACTS WITH RESPECT TO GROUND FOUR

13. PLEASE REFER TO SUPPLEMENTAL GROUNDS ATTACHED HERETO AND FILED HEREWITH
If ~~any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented~~, and give your reasons for not presenting them:

These grounds all involve ineffective assistance of counsel and this is the first opportunity Cotney has had to present any of such grounds.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Mssrs. Brenton L. Dean and William O. Walton, III, 2515 East Glenn Avenue, Suite 304, Auburn, Alabama 36830-6453

(b) At arraignment and plea Same

(c) At trial Same

(d) At sentencing Same

SUPPLEMENT TO PAGE 6
COTNEY, DAVID F., JR.
GROUND 4 et seq.

ISSUE FOUR: COTNEY WAS DEPRIVED OF HIS DUE PROCESS RIGHTS AND HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS OFFENSE LEVEL WAS ENHANCED BY THREE LEVELS BASED UPON CLEARLY ERRONEOUS INFORMATION IN VIOLATION OF THE FIFTH AMENDMENT AND COUNSEL FAILED TO INTRODUCE DOCUMENTARY EVIDENCE AND PICTORIAL EVIDENCE IN HIS POSSESSION TO PROVE THE CLEARLY ERRONEOUS NATURE OF THE GOVERNMENT'S EVIDENCE IN VIOLATION OF THE SIXTH AMENDMENT

The court of appeals held in Cotney's case that "clear error review is appropriate where 'the district court must make a particularized assessment of the credibility or demeanor of the defendant, suchas when applying the obstruction of justice enhancement for perjury.'" At issue was whether or not Cotney recognized that the persons who turned a dog loose upon him to bite him were police officers and failed to stop for them.

The officers testified unequivocally that they were dressed in uniform at the time of the arrest and other events in question. Cotney's counsel had possession of the attached pictures which were taken at the scene revealing that the officers committed perjury, and that they were, in fact dressed in civilian clothes the entire time.

Officer Tommy Simms was the officer who claimed to have handcuffed Cotney. Attached hereto are two pictures of Simms. One picture depicts Simms in the midst of the laboratory. The other picture clearly shows the surroundings with Simms in civilian clothes.

The other two pictures attached hereto and filed herewith depict Officer Tommy Weldon and Howard Carlton at the scene of the crime in civilian clothes. They likewise were dressed in civilian clothes at all times. These officers, as well as Simms, contended that they were in uniform at all times. As a matter of fact, all officers in the area were said to have been in uniform at all times.

These pictures clearly place the court in the situation in which it is compelled to conduct clear error review and vacate, set aside,

SUPPLEMENT TO PAGE 6
COTNEY, DAVID F., JR.
GROUND 4 et seq.

or correct Cotney's sentence. Counsel had the enclosed pictures in his posssession during the officers' testimony and neither presented the pictures as evidence nor cross-examined the officers based upon the perjury revealed by the pictures.

Counsel was deficient for failing to present the pictures as evidence and cross-examine the officers accordingly. The sentence was enhanced by three points by reason of this deficiency. Cotney was also prejudiced in the context of plea-bargaining because if he had known his sentence would have been enhanced based upon an erroneous enhancement for obstruction of justice, he would never have pleaded guilty and would have insisted upon a jury trial.

COLOR PHOTO

WILL NOT SCAN

HELD IN THE CLERK'S OFFICE
FOR VIEWING

CONVENTIONALLY

4 pictures

SUPPLEMENTARY GROUNDS
GROUNDS FIVE AND SIX
COTNEY, David F.

ISSUE FIVE: COTNEY WAS DEPRIVED OF HIS DUE PROCESS AND EFFECTIVE-ASSISTANCE RIGHTS GUARANTEED BY THE FIFTH AND SIXTH AMENDMENTS WHEN HIS OFFENSE LEVEL WAS INCREASED BY THREE LEVELS FOR AN ALLEGED AGGRAVATING ROLE IN THE OFFENSE AND COUNSEL WAS INEFFECTIVE IN FAILING TO PROTECT COTANY'S INTEREST BY MAKING HEARSAY OBJECTIONS UNDER CRAWFORD

The court relied upon nontestimonial, hearsay evidence adduced by Agent DeJohn that Cotney organized the laboratory and was to receive a majority of the methamphetamine to sell. Counsel failed to protect Cotney's interest with respect to nontestimonial, hearsay evidence by advancing Crawford objections during the sentencing hearing and during the appeal.

Counsel was deficient in his representation with respect to the aggravating role enhancement. Cotney was prejudiced by this deficient representation to the extent of three offense level points. If Cotney had known that his attorney would have been deficient and prejudicial as aforesaid, and that he would have been enhanced by three additional offense level points, he would have never pleaded guilty and would have proceeded to a jury trial of the issues.

ISSUE SIX: THE GOVERNMENT BREACHED THE PLEA AGREEMENT WITH RESPECT TO THE SENTENCE TO BE IMPOSED FOR THE 18 U.S.C. §924(C)(1) IN VIOLATION OF THE FIFTH AMENDMENT AND COUNSEL WAS INEFFECTIVE IN VIOLATION OF THE SIXTH AMENDMENT FOR FAILING TO OBJECT TO THE TEN-YEAR SENTENCE IMPOSED AND PROTECT COTNEY FROM THE EXCESSIVE SENTENCE

During plea negotiations, the Government offered to plea-bargain if Cotney would accept, inter alia, a 10-year sentence for the alleged violation of 18 U.S.C. §924(c). Cotney refused to enter into this agreement and it was finally agreed that there would be no enhancements issued and that he would be sentenced to a term of imprisonment of five years for the weapons violation.

SUPPLEMENTARY GROUNDS
GROUND SIX
COTNEY, DAVID F.

The AUSA breached his agreement with Cotney by recommending a 10-year sentence on the basis of a five-year enhancement for discharging a firearm. The sentencing judge purported to impose the same enhancement. However, in recognition of Cotney's insistence upon excluding discharge of a firearm as a basis for enhancement, the U. S. Probation issued a new, revised PSI which asserted that the shotgun was a short-barrelled shotgun, giving rise to a five-year enhancement without consideration of whether the firearm was discharged. The district court adopted, approved, and incorporated the PSI in its entirety, and the AUSA cannot now assert that the enhancement for discharge constitutes the basis for enhancement.

Defense counsel was deficient in his representation for failing to bring the inability of the AUSA to employ discharge as a basis for enhancement. Cotney was prejudiced to the extent of a 5-year enhancement on his sentence. If he had known that he would receive a five-year enhancement, he would have chosen to plead not guilty and insist upon a jury trial.

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(e) On appeal Kyla Groff Kelim, 217 Madison Street, P. O. Box 1977, Alexander City, AL 35011

(f) In any post-conviction proceeding Pro Se

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: ______

(b) Give date and length of the above sentence: ______

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

______
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

January 8, 2007
(Date)

David Franklin Cotney Jr.
DAVID FRANKLIN COTNEY, JR.
Signature of Movant

RECEIVED
2007 JAN 16 A 11: 36
DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

DECLARATION OF MAILING

I, DAVID FRANKLIN COTNEY, JR., do hereby certify and declare, under the penalty of perjury in accordance with 28 U.S.C. §1746, that I am a federal prisoner housed at the U.S. Penitentiary-Big Sandy; that on January 9, 2007, at about 6:30 AM I hand-delivered an envelope containing the accompany MOTION under 28 U.S.C. §2255 addressed to the Clerk of this Court to the Mail Room Clerk; postage pre-paid; and that all other requirements of the mailbox rule were met.

I hereby declare and certify under the penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing representations of fact are true and correct to the best of my knowledge and belief.

EXECUTED this 9th day of January, 2007.

DAVID FRANKLIN COTNEY JR.
David Franklin Cotney Jr.

DAVID FRANKLIN COTNEY, JR.
11196-002
U.S. Penitentiary - Big Sandy
P.O. Box 2068
Inez, KY 41224

7006 0810 0005 2657 3745

CERTIFIED MAIL

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

INEZ KY JAN 9 41224

Clerk
U.S. District Cour.
Middle District of AlAbAMA
P.O. Box 711
Montgomery, Alabama 36101-0711

27BC, CLOSED

U.S. District Court
Alabama Middle District (Opelika)
CRIMINAL DOCKET FOR CASE #: 3:03-cr-00078-WHA-CSC-1
Internal Use Only

Case title: USA v. Cotney
Magistrate judge case number: 3:03-mj-00014

Date Filed: 04/02/2003

Assigned to: Honorable W. Harold Albritton, III
Referred to: Honorable Charles S. Coody

Defendant

David Franklin Cotney, Jr. (1)
TERMINATED: 12/31/2003

represented by

Brenton Lawrence Dean
Brent L. Dean, LLC
9 LaFayette Street North
LaFayette, AL 36862
334-864-5293
Fax: 334-864-5300
Email: deanlaw@bellsouth.net
TERMINATED: 11/04/2003
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

James Robert Cooper, Jr.
Cooper & Cooper
312 Scott Street
Montgomery, AL 36104
334-262-4887
Fax: 262-4880
Email: jrc@cooperandcooperlaw.com
TERMINATED: 04/11/2003
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Kyla Groff Kelim
Davis & Neal
951 Government Street
Suite 117
Mobile, AL 36604

251-434-6848
Email: kkelim@comcast.net
TERMINATED: 12/31/2003
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

William O. (Trip) Walton, III
Walton Law Firm PC
2515 East Glenn Avenue
Suite 304
Auburn, AL 36830
334-321-3000
Fax: 334-321-3007
Email: waltonlaw@waltonlaw.net
TERMINATED: 11/04/2003
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts	Disposition
21:846 CONSPIRACY TO MANUFACTURE CONTROLLED SUBSTANCE - NMT $4,000,000, [*]; NLT 10Y, NMT LIFE; B; NLT 5Y SUP REL; $100 SA; VWPA; G-LINES (1)	222 MOS IMPR; 5 YRS SUP REL; $100 SA; $3,054 RESTITUTION
18:924(c)(1) VIOLENT CRIME/DRUGS/MACHINE GUN - NMT $250,000, [*]; NLT 10Y, B; NMT 3Y SUP REL; $100 SA; VWPA; G-LINES (2)	120 MOS IMPR (consecutive to Ct. 1); 5 YRS SUP REL (concurrent with Ct. 1); $100 SA; $3,054 RESTITUTION (same as stated in Ct. 1)

Highest Offense Level (Opening)

Felony

Terminated Counts	Disposition
None	

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

United States of America

represented by **Todd A. Brown**
U.S. Attorney's Office
PO Box 197
Montgomery, AL 36101-0197
334-223-7280
Fax: 223-7560
Email: todd.brown@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/25/2003	1	COMPLAINT as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner [3:03-m -14] (sql) (Entered: 03/25/2003)
03/25/2003		**Added Government Attorney Todd A. Brown as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner [3:03-m -14] (sql) (Entered: 03/25/2003)
03/25/2003		**Added party US Marshals Service, Montgomery U.S. Probation, Dothan U.S. Probation, U.S. Pretrial, USA Financial Unit [3:03-m -14] (sql) (Entered: 03/25/2003)
03/25/2003	2	Arrest WARRANT issued as to David Franklin Cotney Jr. [3:03-m -14] (sql) (Entered: 03/25/2003)
03/25/2003		**Added party David Franklin Cotney Jr. - Federal Inmate, c/o Montgomery City Jail, P. O. Box 159, Montgomery, AL 36101-0159 [3:03-m -14] (sql) (Entered: 03/28/2003)
03/26/2003		ARREST of David Franklin Cotney Jr. [3:03-m -14] (sql) (Entered: 03/26/2003)
03/26/2003	6	CJA 23 FINANCIAL AFFIDAVIT by David Franklin Cotney Jr. [3:03-m -14] (sql) (Entered: 03/26/2003)
03/26/2003	7	MOTION by USA as to David Franklin Cotney Jr. for detention Hearing [7-1] referred to Mag. Judge Delores R. Boyd [3:03-m -14] (sql) (Entered: 03/26/2003)
03/26/2003		Initial appearance as to David Franklin Cotney Jr. held before Mag. Judge Delores R. Boyd on 3/26/03 (Defendant informed of rights.) [

		3:03-m -14] (sql) (Entered: 03/26/2003)
03/26/2003	8	Courtroom Deputy's Minutes as to David Franklin Cotney Jr. initial appearance.: [3:03-m -14] (sql) (Entered: 03/26/2003)
03/26/2003	15	CJA 20 as to David Franklin Cotney Jr.: Appointment of Attorney James Robert Cooper Jr. (Signed by Mag. Judge Delores R. Boyd) Copies mailed to: counsel, [3:03-m -14] (sql) (Entered: 03/26/2003)
03/26/2003	18	ORDER as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon Setting Detention/Preliminary Hearing for 10:00 a.m. on 3/28/03 for David Franklin Cotney Jr., for Allen Lee for Jonathan Boyd Weldon before Mag. Judge Delores R. in Courtroom 4A, at U.S. Courthouse (Signed by Mag. Judge Delores R. Boyd) Copies mailed to: Counsel, Deft, Copies furnished to: USA, USM, USPO, USPTS, SL, YG, HC [3:03-m -14] (ws) (Entered: 03/26/2003)
03/27/2003	20	Arrest WARRANT Returned Executed as to David Franklin Cotney Jr. on 3/24/03 [3:03-m -14] (sql) (Entered: 03/27/2003)
03/28/2003		Preliminary Examination as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner held before Mag. Judge Delores R. Boyd on 3/28/03 [3:03-m -14] (sql) (Entered: 03/28/2003)
03/28/2003		Detention hearing as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner held before Mag. Judge Delores R. Boyd on 3/28/03 [3:03-m -14] (sql) (Entered: 03/28/2003)
03/28/2003	27	Courtroom Deputy's Minutes and witness list as to David Franklin Cotney Jr. of preliminary/detention hearing. [FTR: 10:21 - 11:25 am]: [3:03-m -14] (sql) (Entered: 03/28/2003)
03/28/2003	31	ORDER as to David Franklin Cotney Jr. binding defendant over to the district court for further proceedings. (Signed by Mag. Judge Delores R. Boyd) , Copies furnished to: counsel, usa, ptso, uspo, usm [3:03-m -14] (sql) (Entered: 03/28/2003)
03/28/2003	32	DETENTION ORDER as to David Franklin Cotney Jr. (Signed by Mag. Judge Delores R. Boyd) , Copies furnished to: counsel, usa, ptso, uspo, usm [3:03-m -14] (sql) (Entered: 03/28/2003)
04/02/2003	42	INDICTMENT as to David Franklin Cotney (1) count(s) 1, 2, Allen Lee Nelson (2) count(s) 1, Jonathan Boyd Weldon (3) count(s) 1, Gregory Bonner (4) count(s) 1 (sql) (Entered: 04/04/2003)
04/02/2003		**Added Government Attorney Todd A. Brown as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner (sql) (Entered: 04/04/2003)

04/02/2003		**Added party David Franklin Cotney Jr. (sql) (Entered: 04/04/2003)
04/02/2003		Magistrate Judge Charles S. Coody assigned to case for discovery matters as well as matters subsequently referred by District Judge . (sql) (Entered: 04/04/2003)
04/02/2003		(sql) (Entered: 04/04/2003)
04/02/2003		**Added party US Marshals Service, Montgomery U.S. Probation, Dothan U.S. Probation, U.S. Pretrial, USA Financial Unit (sql) (Entered: 04/04/2003)
04/04/2003	44	ORDER TO PRODUCE PRISONERS as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner for arraignement on 4/16/03 at 10 a.m. (sql) (Entered: 04/04/2003)
04/04/2003	45	NOTICE of Appearance for David Franklin Cotney Jr. by Attorney William O. (Trip) Walton III, Brenton L. Dean (sql) (Entered: 04/04/2003)
04/04/2003		Deadline updated as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner, set Arraignment for at 10:00 4/16/03 for David Franklin Cotney Jr., for Allen Lee Nelson, for Jonathan Boyd Weldon, for Gregory Bonner for Courtroom 4A before Mag. Judge Delores R. Boyd in Courtroom 4A (sql) (Entered: 04/04/2003)
04/04/2003	46	NOTICE of Appearance for David Franklin Cotney Jr. by Attorney James R. Cooper, Jr. (ws) (Entered: 04/07/2003)
04/10/2003	47	MOTION by David Franklin Cotney Jr. for James R. Cooper, Jr. to Withdraw as Attorney [47-1] referred to Mag. Judge Charles S. Coody (ws) (Entered: 04/10/2003)
04/11/2003		**Terminated document(s) as to David Franklin Cotney Jr.: terminating [47-1] motion for James R. Cooper, Jr. to Withdraw as Attorney as to David Franklin Cotney (1) (ekl) (Entered: 04/11/2003)
04/11/2003		**Terminated attorney James Robert Cooper for David Franklin Cotney . (Defendant has retained counsel) (ekl) (Entered: 04/11/2003)
04/16/2003		ARRAIGNMENT as to David Franklin Cotney Jr. held before Mag. Judge Delores R. Boyd on 4/16/03 Defendant(s) appeared with counsel and after having been advised of Defendant(s') rights, entered a plea of not guilty. (sql) (Entered: 04/16/2003)
04/16/2003		PLEA of Not Guilty: David Franklin Cotney (1) count(s) 1, 2 ; Court accepts plea. (sql) (Entered: 04/16/2003)
04/16/2003	48	Courtroom Deputy's Minutes as to David Franklin Cotney Jr. of arraignment.: (sql) (Entered: 04/16/2003)

04/18/2003	55	ORDER on Arraignment as to David Franklin Cotney Jr. that all discovery shall be conducted according to the requirments of this court's Standing Order on Criminal Discovery; directing that Discovery by the government is due on or before 4/16/03 for David Franklin Cotney Jr. ; that disclosures by the defendant shall be provided on or before 4/23/03; Pretrial Motions due by 5/16/03 for David Franklin Cotney Jr. ;that any requested voir dire questions and jury instructions must be filed no later than one week before jury selection; Pretrial Conference is set for 3:00 p.m. on 5/19/03 for David Franklin Cotney Jr. in U.S. Courthouse before Mag. Judge Charles S. Coody; that Jury Trial is set for 10:00 a.m. on 6/9/03 for David Franklin Cotney Jr. in U.S. Courthouse before Unassigned Judge; setting Jury Selection for 10:00 a.m.on 6/9/03 for David Franklin Cotney Jr. in U.S. Courthouse before Unassigned Judge and government response to pretrial motions due 10 days from motion filing date. (Signed by Mag. Judge S. Coody) Copies mailed to: COunsel, Deft, Copies furnished to: USA, USM, USPO, USPTS, EL, JT, YG, HC, WR (ws) (Entered: 04/21/2003)
04/29/2003		TRANSCRIPT filed in case as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner for dates of 3/28/03 preliminary and detention hearing before Judge Boyd (ekl) (Entered: 04/29/2003)
05/13/2003	103	CJA 20 Authorization to pay James Robert Cooper Jr. for defendant David Franklin Cotney Jr., Amount: $ 499.76 Voucher # 030430000065 (Signed by Mag. Judge Charles S. Coody) Copies mailed to: Counsel, (ws) (Entered: 07/07/2003)
05/19/2003	56	NOTICE of Intent to Change Plea by David Franklin Cotney Jr. (ws) (Entered: 05/19/2003)
05/19/2003		Pre-trial conference as to David Franklin Cotney Jr. held before Mag. Judge Charles S. Coody on 5/19/03 (ws) (Entered: 05/20/2003)
05/19/2003	60	Courtroom Deputy's Minutes as to David Franklin Cotney Jr.: Pretrial Conference (3:05 - 3:07) (ws) (Entered: 05/20/2003)
05/21/2003	66	ORDER as to David Franklin Cotney Jr., Allen Lee Nelson that this case be assigned to Chief U.S. Judge Albritton (Signed by Mag. Judge Charles S. Coody) Copies mailed to: Counsel, Deft, Copies furnished to: USA, USM, USPO, USPTS, EL, WS (ws) (Entered: 05/21/2003)
05/21/2003		CASE Assigned to Judge W. H. Albritton III (ws) (Entered: 05/21/2003)
05/21/2003	67	ORDER as to David Franklin Cotney Jr., Allen Lee Nelson that this case be referred to a U.S. Magistrate Judge to conduct all of the proceedings required by Rule 11 of the FRCr.P incident to a guilty

		plea and to make a recommendation concerning acceptance of the guilty plea (Signed by Judge W. H. Albritton III) Copies mailed to: Counsel, Deft, Copies furnished to: USA, USM, USPO, USPTS, EL, WS (ws) (Entered: 05/21/2003)
05/21/2003	68	ORDER as to David Franklin Cotney Jr., Allen Lee Nelson Setting Change of Plea Hearing for 3:00 p.m. on 5/22/03 for David Franklin Cotney Jr., for Allen Lee Nelson at U.S. Courthouse before Mag. Judge Charles S. Coody in Courtroom 4B (Signed by Mag. Judge Charles S. Coody) Copies mailed to: Counsel, Deft, Copies furnished to: USA, USM, USPO, USPTS, EL, YG, HC (ws) (Entered: 05/21/2003)
05/22/2003	70	ORDER as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon Resetting Change of Plea Hearing for 10:00 a.m. on 5/28/03 for David Franklin Cotney Jr., for Allen Lee Nelson, for Jonathan Boyd Weldon at U.S. Courthouse before Mag. Judge Charles S. Coody in Courtroom 4B (Signed by Mag. Judge Charles S. Coody) Copies mailed to: Counsel, Deft, Copies furnished to: USA, USM, USPO, USPTS, EL, YG, HC (ws) (Entered: 05/22/2003)
05/28/2003		Change of Plea Hearing as to David Franklin Cotney Jr. held before Mag. Judge Charles S. Coody on 5.28.03 (ws) (Entered: 05/28/2003)
05/28/2003	77	CONSENT to enter guilty plea before U.S. Magistrate Judge executed by David Franklin Cotney Jr. and his attorney. (ws) (Entered: 05/28/2003)
05/28/2003		PLEA of Guilty: David Franklin Cotney (1) count(s) 1, 2 ; Court accepts plea. (ws) (Entered: 05/28/2003)
05/28/2003	78	Plea Agreement as to David Franklin Cotney Jr. (ws) (Entered: 05/28/2003)
05/28/2003	79	Courtroom Deputy's Minutes as to David Franklin Cotney Jr.: Change of Plea; Risa Entrekin, Court Reporter (ws) (Entered: 05/28/2003)
05/28/2003	86	REPORT AND RECOMMENDATIONS of Mag. Judge Charles S. Coody as to David Franklin Cotney Jr. Re: Guilty Plea, Objections due by 6/6/03 [86-1] report and recommendations Copies mailed to: Counsel, Deft, Copies furnished to: USA, USM, USPO, USPTS, EL (ws) (Entered: 05/28/2003)
05/30/2003	89	Notice to Retained Counsel as to defendant David Franklin Cotney Jr. sent to Brenton L. Dean for defendant David Franklin Cotney Jr., William O. (Trip) Walton III for defendant David Franklin Cotney Jr. (ekl) (Entered: 05/30/2003)
06/13/2003		**Terminated document(s) as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon : terminating [7-1] motion for

		detention Hearing as to David Franklin Cotney (1) (sql) (Entered: 06/13/2003)
06/19/2003	93	ACCEPTANCE OF PLEA OF GUILTY AND ADJUDICATION OF GUILT as to Cts I and II as to David Franklin Cotney Jr. (Signed by Judge W. H. Albritton III) , Copies furnished to: USA,USM,USPTS,USPO,COUNSEL (ekl) (Entered: 06/19/2003)
06/19/2003	94	ORDER as to David Franklin Cotney Jr. setting Sentencing for for 9:00 9/4/03 for David Franklin Cotney Jr. at Courtroom 2C before Judge W. H. Albritton III in Courtroom 2C (Signed by Judge W. H. Albritton III) Copies mailed to: defendant, Copies furnished to: USA,USM,USPTS,USPO,YG (ekl) (Entered: 06/19/2003)
06/26/2003	101	MOTION (Petition) by USA as to David Franklin Cotney Jr. for Order directing the USM to Release Defendant from Custody July 2 - Sept 30, 2003 to Special Agents as set out in motion [101-1] referred to Mag. Judge Charles S. Coody (ekl) (Entered: 06/26/2003)
06/27/2003	102	ORDER as to David Franklin Cotney Jr. terminating [101-1] motion for Order directing the USM to Release Defendant from Custody July 2 - Sept 30, 2003 to Special Agents as set out in motion as to David Franklin Cotney (1) (Signed by Mag. Judge Delores R. Boyd) , Copies furnished to: USA,USM,USPTS,USPO,COUNSEL (ekl) (Entered: 06/27/2003)
08/26/2003	113	MOTION by USA as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon to continue 9/4/03 sentencing [113-1] referred to Judge W. H. Albritton III (ws) Modified on 09/15/2003 (Entered: 08/27/2003)
08/27/2003	114	ORDER as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon granting [113-1] motion to continue 9/4/03 sentencing as to David Franklin Cotney (1), Allen Lee Nelson (2), Jonathan Boyd Weldon (3) Resetting Sentencing for 10:00 a.m. on 10/15/03 for David Franklin Cotney Jr., for Allen Lee Nelson, for Jonathan Boyd Weldon at Courtroom 2C before Judge W. H. Albritton III in U.S. Courthouse (Signed by Judge W. H. Albritton III) Copies mailed to: Counsel, Deft, Copies furnished to: USA, USM, USPO, USPTS, EL, YG, HC (ws) (Entered: 08/27/2003)
09/05/2003		CASE Reassigned to Judge W. H. Albritton III (ws) (Entered: 09/05/2003)
09/11/2003		**Terminated deadlines as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner (ekl) (Entered: 09/11/2003)
10/08/2003	136	MOTION by USA as to David Franklin Cotney Jr. for Reduction of Sentence and Certification of Substantial Assistance pursuant to 5K1.1, USSG [136-1] referred to Judge W. H. Albritton III (ekl) (Entered: 10/09/2003)

10/08/2003	137	MOTION by USA as to David Franklin Cotney Jr. to Decrease Defendant's Offense Level pursuant to 3E1.1(b), USSG (Acceptance of Responsibility) [137-1] referred to Judge W. H. Albritton III (ekl) (Entered: 10/09/2003)
10/15/2003		Sentencing held before Judge W. H. Albritton III on 10-15-03 David Franklin Cotney (1) count(s) 1, 2, Allen Lee Nelson (2) count(s) 1, Jonathan Boyd Weldon (3) count(s) 1. RISA ENTREKIN, COURT REPORTER (ekl) (Entered: 10/22/2003)
10/15/2003		ORAL ORDER as to David Franklin Cotney Jr. denying [137-1] motion to Decrease Defendant's Offense Level pursuant to 3E1.1(b), USSG (Acceptance of Responsibility) as to David Franklin Cotney (1), granting [136-1] motion for Reduction of Sentence and Certification of Substantial Assistance pursuant to 5K1.1, USSG as to David Franklin Cotney (1) (Entered by Judge W. H. Albritton III) (ekl) (Entered: 10/22/2003)
10/15/2003		ORAL MOTION in open court by USA as to David Franklin Cotney Jr. to Strike Forfeiture Allegation [0-0] referred to Judge W. H. Albritton III (ekl) (Entered: 10/22/2003)
10/15/2003		ORAL ORDER as to David Franklin Cotney Jr. granting [0-0] oral motion to Strike Forfeiture Allegation as to David Franklin Cotney (1) (Entered by Judge W. H. Albritton III) (ekl) (Entered: 10/22/2003)
10/16/2003	146	Courtroom Deputy's Minutes of sentencing 10-15-03; witness list; exhibit lists as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon. RISA ENTREKIN, COURT REPORTER. : (ekl) (Entered: 10/22/2003)
10/21/2003		**Terminated deadlines as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner (ekl) (Entered: 10/21/2003)
10/22/2003	147	JUDGMENT David Franklin Cotney (1) count(s) 1. 222 MOS IMPR; 5 YRS SUP REL; $100 SA; $3,054 RESTITUTION , David Franklin Cotney (1) count(s) 2. 120 MOS IMPR (consecutive to Ct. 1); 5 YRS SUP REL (concurrent with Ct. 1); $100 SA; $3,054 RESTITUTION (same as stated in Ct. 1) (Signed by Judge W. H. Albritton III) Copies mailed to: defendant, Copies furnished to: USA,USM,USPTS,USPO,COUNSEL,FIN CLK,MT (ekl) (Entered: 10/22/2003)
10/22/2003	150	NOTICE Regarding Restitution by USA as to David Franklin Cotney Jr. (the victim withdraws its request for restitution related to the killing of the Sheriff's department canine) (ekl) (Entered: 10/23/2003)
10/23/2003	152	NOTICE OF APPEAL by David Franklin Cotney (1) count(s) 1, 2 to U.S. Circuit Court of Appeals, 11th Circuit, Copies mailed to: USCA, Dft, Copies furnished to: USA (kcg) (Entered: 10/27/2003)

10/23/2003	153	MOTION by David Franklin Cotney Jr. to Proceed on Appeal in Forma Pauperis [153-1] referred to Judge W. H. Albritton III (kcg) (Entered: 10/27/2003)
10/23/2003	154	AFFIDAVIT by David Franklin Cotney Jr. Re: [153-1] motion to Proceed on Appeal in Forma Pauperis (kcg) (Entered: 10/27/2003)
10/27/2003		Notice of appeal and certified copy of docket, Judgments/Orders, and Magistrate Judge recommendations as to David Franklin Cotney Jr. sent to USCA (11th Circuit): [152-1] appeal (kcg) (Entered: 10/27/2003)
10/31/2003	155	MOTION by David Franklin Cotney Jr. for Will O. Walton, III to Withdraw as Attorney [155-1] referred to Judge W. H. Albritton III (ws) (Entered: 10/31/2003)
11/04/2003	156	ORDER as to David Franklin Cotney Jr. granting [155-1] motion for Will O. Walton, III to Withdraw as Attorney (Terminated attorney Brenton L. Dean for David Franklin Cotney, attorney William O. (Trip) Walton for David Franklin Cotney as to David Franklin Cotney (1) (Signed by Judge W. H. Albritton III) Copies mailed to: Counsel, Deft, Copies furnished to: USA, USM, USPO, EL (ws) (Entered: 11/04/2003)
11/04/2003		USCA Case Number as to David Franklin Cotney Jr. Re: [152-1] appeal USCA Number: 03-15473-I (kcg) (Entered: 11/04/2003)
11/04/2003	157	STAMPED ORDER as to David Franklin Cotney Jr. granting [153-1] motion to Proceed on Appeal in Forma Pauperis as to David Franklin Cotney (1) (Entered by Judge W. H. Albritton III) Copies mailed to: USCA, Dft, Copies furnished to: USA (kcg) (Entered: 11/04/2003)
12/02/2003		Received $200.00 assessment payment by David Franklin Cotney Jr.; Receipt #100108 (ws) (Entered: 12/03/2003)
12/18/2003	164	ORDER as to David Franklin Cotney Jr. that the court finds that the dft. is eligible for the appointment of counsel pursuant to the Criminal Justice Act, 18 U.S.C. 3006A; ORDERED that Kyla Groff Kelim be appointed to represent the dft. for purposes of appeal; (Signed by Judge W. H. Albritton III) Copies mailed to: USCA, counsel, dft, Copies furnished to: USA (ydw) (Entered: 12/18/2003)
12/18/2003		**Added for David Franklin Cotney Jr. Attorney Kyla Groff Kelim (ydw) (Entered: 12/18/2003)
12/31/2003		** Renoticed document [169-1] order, [168-1] order . (failed to receive bar codes) (ekl) (Entered: 12/31/2003)
12/31/2003		** Renoticed document [169-1] order (computer did not generate the bar code) (ekl) (Entered: 12/31/2003)
12/31/2003		**Terminated document(s) as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner : terminating

		[125-1] report and recommendations Objections due by 9/19/03 [125-1] report and recommendations as to Gregory Bonner (4), terminating [0-0] report and recommendations as to Gregory Bonner (4), terminating [88-1] report and recommendations Objections due by 6/6/03 [88-1] report and recommendations as to Jonathan Boyd Weldon (3), terminating [0-0] report and recommendations as to Jonathan Boyd Weldon (3), terminating [87-1] report and recommendations Objections due by 6/6/03 [87-1] report and recommendations as to Allen Lee Nelson (2), terminating [0-0] report and recommendations as to Allen Lee Nelson (2), terminating [86-1] report and recommendations Objections due by 6/6/03 [86-1] report and recommendations as to David Franklin Cotney (1), terminating [0-0] report and recommendations as to David Franklin Cotney (1) (ekl) (Entered: 01/06/2004)
12/31/2003		**Case closed as to David Franklin Cotney Jr., Allen Lee Nelson, Jonathan Boyd Weldon, Gregory Bonner (all defendants). party Gregory Bonner, party Jonathan Boyd Weldon, party Allen Lee Nelson, party David Franklin Cotney (ekl) (Entered: 01/06/2004)
01/06/2004		Received Transcript Order Information Sheet from Kyla Kelim as to David Franklin Cotney Jr with following notation: Pre-Trial Proceedings 3/26/03, 3/28/03, Mag. Judge Boyd, minutes; Trial - 4/16/03, 5/19/03, Mag. Judge Boyd/Mag. Judge Coody, minutes, Jimmy Dickens C/R; Sentence - 10/15/03, Judge Albritton, Risa Entrekin C/R; Other - 5/28/03, Mag. Judge Coody, Risa Entrekin C/R, 9/8/03, Mag. Judge Coody, Risa Entrekin C/R, 12/23/03, Judge Albritton Risa Entrekin C/R, Transcript on file, doc #--(4/29/03); furnished to Court Reporter RE and JD. (ydw) Modified on 01/13/2004 (Entered: 01/06/2004)
01/07/2004		CJA 24 voucher mailed to Atty Kyla Groff Kelim for signature in Section #15 as to David Franklin Cotney Jr. (ydw) Modified on 01/13/2004 (Entered: 01/07/2004)
01/26/2004	172	Judgment Returned Executed as to David Franklin Cotney Jr.; on 1/15/04 defendant delivered to USP Big Sandy (ekl) (Entered: 01/27/2004)
02/06/2004		CJA 24 voucher mailed to Atty Kyla Groff Kelim for signature in Section # 22 as to David Franklin Cotney Jr. (ydw) (Entered: 02/06/2004)
02/06/2004		Court Report Entrekin's TRANSCRIPT filed as to David Franklin Cotney Jr. for dates of May 28, 2003, Change of Plea Hearing; Certificate of Readiness due on 2/20/04 for David Franklin Cotney Jr. [152-1] appeal (ydw) (Entered: 02/06/2004)
02/06/2004		Court Reporter Entrekin's TRANSCRIPT filed as to David Franklin Cotney Jr. (Gregory Bonner) for dates of September 8, 2003, Change of Plea Hearing Certificate of Readiness due on for David

		Franklin Cotney Jr. [152-1] appeal (ydw) Modified on 02/06/2004 (Entered: 02/06/2004)
02/06/2004		Court Report Entrekin's TRANSCRIPT filed as to David Franklin Cotney Jr. for dates of October 15, 2003, Sentencing Hearing; Certificate of Readiness due on 2/20/04 for David Franklin Cotney Jr. [152-1] appeal (ydw) (Entered: 02/06/2004)
02/06/2004		Court Reporter's TRANSCRIPT filed as to David Franklin Cotney Jr. (Gregory Bonner) for dates of 12/23/03, Sentencing Hearing; Certificate of Readiness due on 2/20/04 for David Franklin Cotney Jr. [152-1] appeal (ydw) (Entered: 02/06/2004)
02/09/2004		TRANSCRIPT filed as to David Franklin Cotney Jr. for dates of 3/26/03, Initial Appearance Hearing; Certificate of Readiness due on 2/23/04 for Franklin Cotney Jr. [152-1] appeal [JIMMY DICKENS C/R] (ydw) (Entered: 02/10/2004)
02/09/2004		TRANSCRIPT filed as to David Franklin Cotney Jr. for dates of 3/28/03, Preliminary and Detention Hearing; Certificate of Readiness due on 2/23/04 for David Franklin Cotney Jr. [152-1] appeal [JIMMY DICKENS C/R] (ydw) (Entered: 02/10/2004)
02/09/2004		TRANSCRIPT filed as to David Franklin Cotney Jr. for dates of 4/16/03, Arraignment Hearing; Certificate of Readiness due on 2/23/04 for David Franklin Cotney Jr. [152-1] appeal [JIMMY DICKENS C/R] (ydw) (Entered: 02/10/2004)
02/09/2004		TRANSCRIPT filed as to David Franklin Cotney Jr. for dates of 5/19/03, Pretrial Conference; Certificate of Readiness due on 2/23/04 for David Franklin Cotney Jr. [152-1] appeal [JIMMY DICKENS C/R] (ydw) (Entered: 02/10/2004)
02/18/2004	173	CJA 24 as to David Franklin Cotney Jr. Authorization to Pay Risa L. Entrekin $ 808.50 for Transcript (Signed by Judge W. H. Albritton III), (ydw) (Entered: 02/18/2004)
02/18/2004	174	CJA 24 as to David Franklin Cotney Jr. Authorization to Pay Risa L. Entrekin $ 808.50 for Transcript Voucher # 040223000036 (Signed by Judge W. H. Albritton III) Copies mailed to: Counsel, (ws) (Entered: 02/26/2004)
03/05/2004		CERTIFICATE OF READINESS of record on appeal mailed to USCA, 11th Circuit and counsel: [152-1] appeal by David Franklin Cotney Jr. (ydw) (Entered: 03/05/2004)
03/09/2004	176	CJA 24 as to David Franklin Cotney Jr. Authorization to Pay James R. Dickens $ 224.40 for Transcript (Signed by Judge W. H. Albritton III) , (ydw) (Entered: 03/16/2004)
03/09/2004	177	CJA 24 as to David Franklin Cotney Jr.: Authorization to Pay James Dickens $ 224.40 for Transcript, . Signed by Judge W. Harold Albritton III on 3/9/04. (ws,) (Entered: 04/15/2004)

04/12/2004		Payment Received from BOP: as to David Franklin Cotney Jr. $ 25.00 rest. payment; receipt number 101788 (ws,) (Entered: 04/16/2004)
05/07/2004		Request for Record on Appeal By USCA Eleventh Circuit re: 03-15473-I, 152 appeal (ydw,) (Entered: 05/07/2004)
05/07/2004		Certified and Transmitted Record on Appeal as to David Franklin Cotney Jr. to US Court of Appeals re 152 Notice of Appeal - Final Judgment, 03-15473-I (ydw,) (Entered: 05/07/2004)
05/14/2004		Acknowledgement of Receipt of Record on Appeal from USCA re 03-15473-II, 152 Notice of Appeal - Final Judgment (ydw,) (Entered: 05/17/2004)
07/15/2004		Payment Received from BOP: as to David Franklin Cotney Jr. $ 25.00 rest. payment; receipt number 102942 (ws,) (Entered: 07/21/2004)
01/14/2005		Payment Received from BOP: as to David Franklin Cotney, Jr $ 35.00 rest. payment; receipt number 105030 (ws,) (Entered: 01/18/2005)
04/11/2005		Payment Received from BOP: as to David Franklin Cotney, Jr $ 35.00 rest.payment, receipt number 105953 (ws,) (Entered: 04/19/2005)
07/08/2005		Payment Received from BOP: as to David Franklin Cotney, Jr $ 35.00 rest. payment, receipt number 106918 (ws,) (Entered: 07/27/2005)
10/07/2005		Payment Received from BOP: as to David Franklin Cotney, Jr $ 35.00 rest. payment, receipt number 107907 (ws,) (Entered: 10/11/2005)
10/12/2005	185	Per Curiam Opinion (ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES) RE: 03-15473-II, received from USCA Eleventh Circuit of Opinion Entered on 9/12/05; OPINION REINSTATED IN PART; AFFIRMED IN PART. (ydw,) (Entered: 10/13/2005)
10/12/2005	186	JUDGMENT (ISSUED AS MANDATE 10/11/05)of USCA (certified copy) as to David Franklin Cotney, Jr re 03-15473-II, 152 Notice of Appeal - Final Judgment; Because Cotney did not assert error based on Apprendi (or its progeny) in his initial brief on appeal, we reinstate our previous opinion in this case and affirm Cotney's sentence after our reconsideration in light of Booker, pursuant to the Supreme Court's mandate. OPINION REINSTATED IN PART; AFFIRMED IN PART. (ydw,) (Entered: 10/13/2005)
10/12/2005		Appeal Record Returned as to David Franklin Cotney, Jr: 03-15473-II, 152 Notice of Appeal - Final Judgment (ydw,) (Entered: 10/13/2005)

01/09/2006		Payment Received from BOP: as to David Franklin Cotney, Jr $ 35.00 rest. payment, receipt number 108933 (ws,) (Entered: 01/10/2006)
01/23/2006		NOTICE FROM USCA as to David Franklin Cotney, Jr re 03-15473-II, 152 Notice of Appeal - Final Judgment; Stating that the Supreme court has denied certiorari. The court's mandate having previously issued, no further action will be taken by this court. (ydw,) (Entered: 01/23/2006)
04/11/2006		Payment Received from BOP: as to David Franklin Cotney, Jr $ 35.00 rest. payment, receipt number 109885 (ws,) (Entered: 04/12/2006)

AO 245B (Rev. 3/01) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

MIDDLE District of ALABAMA

UNITED STATES OF AMERICA
V.

DAVID FRANKLIN COTNEY, JR.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:03CR00078-001

Brenton L. Dean and William O. Walton
Defendant's Attorney

FILED
OCT 22 2003
CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

THE DEFENDANT:

X pleaded guilty to count(s) 1 and 2 of the Indictment on May 28, 2003

☐ pleaded nolo contendere to count(s) ______ which was accepted by the court.

☐ was found guilty on count(s) ______ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 846	Conspiracy to Manufacture 50 grams or more of Methamphetamine	03-24-2003	1
18 USC 924(c)(1)	Using a Firearm in Connection with a Drug Trafficking Offense	03-24-2003	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) ______

☐ Count(s) ______ ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 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

Defendant's Date of Birth: 03-03-1973

Defendant's USM No.: 11196-002

Defendant's Residence Address:

4109 18th Avenue
Valley, Alabama 36854

Defendant's Mailing Address:

4109 18th Avenue
Valley, Alabama 36854

October 15, 2003
Date of Imposition of Judgment

[signature]
Signature of Judicial Officer

W. HAROLD ALBRITTON, CHIEF U. S. DISTRICT JUDGE
Name and Title of Judicial Officer

10/22/03
Date

EOD 10-22-03

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DEFENDANT: DAVID FRANKLIN COTNEY, JR.
CASE NUMBER: 3:03CR00078-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total total term of **342 months**.

This term consists of 222 months on Count 1 and 120 months on Count 2 to be served consecutively to the term on Count 1. The sentence is imposed at 342 months because of the defendant's serious conduct and criminal history.

X The court makes the following recommendations to the Bureau of Prisons:
The court recommends that the defendant be designated to a facility where Intensive Residential Substance Abuse Treatment is available.

The court further recommends that the defendant be placed in an institution separate from the co-defendants in this case.

X The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at __________ ☐ a.m. ☐ p.m. on __________ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on __________ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

____

____

____

Defendant delivered on __________ to __________

at __________ , with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By ____________________
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DAVID FRANKLIN COTNEY, JR.
CASE NUMBER: 3:03CR00078-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term 5 years.
This term consists of 5years on each of Counts 1 and 2, all such terms to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

X The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DAVID FRANKLIN COTNEY, JR.
CASE NUMBER: 3:03CR00078-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in drug testing and/or treatment if directed by the probation officer, and shall contribute to the cost of any treatment based on ability to pay and availability of third party payments.

2. The defendant shall provide the probation officer any requested financial information.

3. The defendant shall not obtain new credit without approval of the probation officer unless in compliance with the payment schedule.

4. The defendant shall submit to a search of his person, residence, office or vehicle pursuant to the search policy of this court.

DEFENDANT: DAVID FRANKLIN COTNEY, JR.
CASE NUMBER: 3:03CR00078-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
TOTALS	**$ 200.00**	**$ 0**	**$ 3,054.00**

X The determination of /total restitution is deferred until 10-22-03 / . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
The Drug Enforcement Administration 2350 Fairlane Drive,Suite 200 Montgomery, AL 36116		$ 3,054.00	
TOTALS	$ ______	$ 3,054.00	

☐ If applicable, restitution amount ordered pursuant to plea agreement $ ______

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

X The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

X the interest requirement is waived for the ☐ fine and/or X restitution.

☐ the interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: DAVID FRANKLIN COTNEY, JR.
CASE NUMBER: 3:03CR00078-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A X Lump sum payment of $ 3,254.00 due immediately, balance due

☐ not later than ______________, or
X in accordance with ☐ C, ☐ D, or X E below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below); or

C ☐ Payment in ______ (e.g., equal, weekly, monthly, quarterly) installments of $ ______ over a period of ______ (e.g., months or years), to commence ______ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in ______ (e.g., equal, weekly, monthly, quarterly) installments of $ ______ over a period of ______ (e.g., months or years), to commence ______ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E X Special instructions regarding the payment of criminal monetary penalties:

Payment shall be made to the Clerk, U.S. District Court, P.O. Box 711, Montgomery, AL 36101. Any balance remaining at the start of supervision shall be paid at the rate of not less than $350.00 per month.

The restitution shall be paid by all co-defendants who are held accountable for restitution, jointly and severally until paid in full.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

X Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

Allen Lee Nelson	Case No. 3:03CR00078-002	$3,054.00
Jonathan Boyd Weldon	Case No. 3:03CR00078-003	3,054.00

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.